

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs September 26, 2007

EARL D. HOLLOWAY v. HOWARD CARLTON, WARDEN

**Direct Appeal from the Criminal Court for Johnson County
No. 5050 Lynn W. Brown, Judge**

No. E2007-01169-CCA-R3-HC - Filed February 19, 2008

The petitioner, Earl D. Holloway, was convicted of second degree murder and sentenced to twenty-two years in the Tennessee Department of Correction. Thereafter, the petitioner filed a petition for a writ of habeas corpus, contending that his sentence was void because the judgment reflected that he was ordered to serve eighty-five percent of his sentence in confinement, not one hundred percent as mandated by statute. The habeas corpus court dismissed the petition, and the petitioner appeals. Upon review of the record and the parties' briefs, we reverse the dismissal of the petition and remand with instructions for the habeas corpus court to grant the petition and transfer to the convicting court for correction of the judgment to reflect the correct release eligibility.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Reversed; Case Remanded.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and JAMES CURWOOD WITT, JR., J., joined.

Earl D. Holloway, Mountain City, Tennessee, Pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Rachel West Harmon, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

On July 11, 1996, the petitioner was found guilty by a jury in the Hamilton County Criminal Court of second degree murder. The trial court sentenced the petitioner to twenty-two years with eligibility for release after service of eighty-five percent of the sentence in confinement. On direct appeal, this court affirmed the petitioner's conviction. State v. Earl Dewayne Holloway, No. 03C01-9803-CR-00117, 1999 WL 281081, at *1 (Tenn. Crim. App. at Knoxville, Apr. 30, 1999). Following the affirmance of his conviction, the petitioner sought post-conviction relief. The post-

conviction court denied relief, and, on appeal, this court affirmed the denial. Earl Dewayne Holloway v. State, No. E2002-02127-CCA-R3-PC, 2003 WL 21554537, at *1 (Tenn. Crim. App. at Knoxville, July 10, 2003).

Thereafter, the petitioner filed in the Johnson County Criminal Court a petition for a writ of habeas corpus. The petitioner asserted that Tennessee Code Annotated section 40-35-501 mandates that he is required to serve one hundred percent of his sentence in confinement before becoming eligible for release. The appellant complained that, contrary to the statutory mandate, his judgment of conviction provides that he is eligible for release after serving eighty-five percent of his sentence. In response, the State acknowledged that the sentence as reflected on the judgment form is illegal; however, the State contended that “an illegal sentence may be corrected at any time.” The habeas corpus court dismissed the petition, finding that “[n]othing in the petition would support a finding by this court that petitioner[’s] conviction is void or that his sentence has expired.” The petitioner appeals the habeas corpus court’s ruling.

II. Analysis

Initially, we note that the determination of whether to grant habeas corpus relief is a question of law. Summers v. State, 212 S.W.3d 251, 255 (Tenn. 2007). As such, we will review the trial court’s findings de novo without a presumption of correctness. Id. Moreover, it is the petitioner’s burden to demonstrate, by a preponderance of the evidence, “that the sentence is void or that the confinement is illegal.” Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, section 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. See Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). However, “[s]uch relief is available only when it appears from the face of the judgment or the record of the proceedings that a trial court was without jurisdiction to sentence a defendant or that a defendant’s sentence of imprisonment or other restraint has expired.” Wyatt, 24 S.W.3d at 322; see also Tenn. Code Ann. § 29-21-101 (2000). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. Taylor, 995 S.W.2d at 83. “A void judgment ‘is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant’s sentence has expired.’ We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal.” Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting Taylor, 995 S.W.2d at 83).

On appeal, the State concedes that the petitioner’s sentence is illegal but contends that the conviction is not void because of an error in the judgment. The State argues that the illegal sentence may be corrected at any time. As acknowledged by the petitioner and the State, our code mandates that an offender convicted of second degree murder “shall serve one hundred percent (100%) of the sentence imposed by the court less sentence credits earned and retained. However, no sentence reduction credits authorized . . . shall operate to reduce the sentence imposed by the court by more than fifteen percent (15%).” Tenn. Code Ann. § 40-35-501(i)(1) and (2)(B). As we earlier noted, the judgment form reflects that the petitioner must serve eighty-five percent of his sentence before

becoming eligible for release, in direct contravention of Tennessee Code Annotated sections 40-35-501(i)(1) and (2). See State v. Burkhart, 566 S.W.2d 871, 873 (Tenn. 1978); State v. Howard Buchanan, No. M2000-00878-CCA-R3-CD, 2001 WL 261544, at *5 (Tenn. Crim. App. at Nashville, Mar. 16, 2001). Without question, “a sentence imposed in direct contravention of a statute . . . is void and illegal.” Stephenson, 28 S.W.3d at 911. Thus, we must reverse the habeas corpus court’s dismissal of the petition. See Jasper D. Lewis v. Cherry Lindamood, Warden, No. M2005-02104-CCA-R3-HC, 2006 WL 2563437, at *3 (Tenn. Crim. App. at Nashville, Aug. 31, 2006).

III. Conclusion

In sum, we conclude that the proper remedy is to reverse the habeas corpus court’s dismissal of the petition for a writ of habeas corpus. On remand, the Johnson County Criminal Court shall transfer the case to the Hamilton County Criminal Court for an entry of a corrected judgment to reflect that the petitioner is required to serve one hundred percent of his sentence in confinement.

NORMA McGEE OGLE, JUDGE